

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

TADARYL SHIPP,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 16-2891-JDT-cgc
	)	
CORECIVIC, ET AL.,	)	
	)	
Defendants.	)	

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ORDER DISMISSING COMPLAINT AND GRANTING LEAVE TO AMEND

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Plaintiff Tadaryl Shipp, who is incarcerated at the Hardeman County Correctional Facility (HCCF) in Whiteville, Tennessee, filed a *pro se* civil complaint and a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) Shipp purported to file the complaint also on behalf of ten other HCCF inmates, but none of the other inmates signed the complaint or filed a motion to proceed *in forma pauperis*. On March 21, 2018, the Court issued an order determining that Shipp is the only proper Plaintiff in this matter, granting him leave to proceed *in forma pauperis* and assessing the filing fee in accordance with the Prison Litigation Reform Act (PLRA), 28 U.S.C. §§ 1915(a)-(b). The Clerk shall record the Defendants as Core Civic<sup>1</sup>, HCCF Assistant Warden Charlotte Burns, HCCF Chaplain John Gore, HCCF Warden Grady Perry, and HCCF Assistant Warden J. Rychen. The Defendants are sued in their individual and official capacities.

The complaint is filed pursuant to 42 U.S.C. §§ 1983, 1985 and 1986, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, and the Religious

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<sup>1</sup> Corrections Corporation of America is now known as CoreCivic. See [www.corecivic.com](http://www.corecivic.com).

Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.*<sup>2</sup> Shipp alleges the Defendants have denied requests by the Brotherhood of Sunni Community Muslims at HCCF for Halal meals and religious prayer oil. (ECF No. 1 at PageID 4, 7.) Defendants, and Defendant Gore in particular, allegedly have a new in-house policy prohibiting Halal meals. (*Id.* at PageID 7.) Gore also allegedly is using the new policy to force Sunni Muslim inmates to purchase prayer oils from a non-Halal Islamic vendor, in violation of their religious tenets. (*Id.*) The attachments to the complaint also appear to allege that Sunni Muslim services and/or “call outs” for prayers were at times canceled or delayed by Shift Commander Lieutenant Godwin and Shift Commander Grier, who are not named as defendants, in retaliation for the filing of grievances. (ECF No. 1-1 at PageID 27-34, 36-40.) The complaint seeks monetary damages as well as declaratory and injunctive relief. (ECF No. 1 at PageID 21.)<sup>3</sup>

The Court is required to screen prisoner complaints and to dismiss any complaint, or any portion thereof, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); see also 28 U.S.C. § 1915(e)(2)(B).

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<sup>2</sup> As an inmate in state custody, Shipp has no claim under RFRA. In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the Supreme Court held that application of RFRA to the states or to state actors exceeded the authority of Congress under Section 5 of the Fourteenth Amendment. See, e.g., *Ervin v. Davis*, No. 2:16-cv-186, 2017 WL 2573251, at \*3 (S.D. Ohio June 14, 2017).

<sup>3</sup> Since the filing of the complaint, numerous “amendments” have been filed, consisting only of affidavits and exhibits from other inmates at the HCCF. (See ECF Nos. 14, 15, 16, 17 & 18.) Other documents purport to be from Shipp but are not signed by him. (See ECF Nos. 10, 11, 12 & 13.) The Court will not consider any of these documents.

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). “Accepting all well-pleaded allegations in the complaint as true, the Court ‘consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.’” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681) (alteration in original). “[P]leadings that . . . are no more than conclusions . . . are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679; *see also Twombly*, 550 U.S. at 555 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.”).

“A complaint can be frivolous either factually or legally. Any complaint that is legally frivolous would *ipso facto* fail to state a claim upon which relief can be granted.” *Hill*, 630 F.3d at 470 (citing *Neitzke v. Williams*, 490 U.S. 319, 325, 328-29 (1989)).

Whether a complaint is factually frivolous under §§ 1915A(b)(1) and 1915(e)(2)(B)(i) is a separate issue from whether it fails to state a claim for relief. Statutes allowing a complaint to be dismissed as frivolous give “judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Neitzke*, 490 U.S. at 327, 109 S. Ct. 1827 (interpreting 28 U.S.C. § 1915). Unlike a dismissal for failure to state a claim, where a judge must accept all factual allegations as true, *Iqbal*, 129 S. Ct. at 1949-50, a judge does not have to accept “fantastic or delusional” factual allegations as true in prisoner complaints that are reviewed for frivolousness. *Neitzke*, 490 U.S. at 327-28, 109 S. Ct. 1827.

*Id.* at 471.

“*Pro se* complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). *Pro se* litigants and prisoners are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, No. 09-2259, 2011 WL 285251, at \*5 (6th Cir. Jan. 31, 2011) (affirming dismissal of *pro se* complaint for failure to comply with “unique pleading requirements” and stating “a court cannot ‘create a claim which [a plaintiff] has not spelled out in his pleading’”) (quoting *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975)) (alteration in original); *Payne v. Sec’y of Treas.*, 73 F. App’x 836, 837 (6th Cir. 2003) (affirming *sua sponte* dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2) and stating, “[n]either this court nor the district court is required to create Payne’s claim for her”); *cf. Pliler v. Ford*, 542 U.S. 225, 231 (2004) (“District judges have no obligation to act as counsel or paralegal to *pro se* litigants.”); *Young Bok Song v. Gipson*, 423 F. App’x 506, 510 (6th Cir. 2011) (“[W]e decline to affirmatively require courts to ferret out the strongest cause of action on behalf of *pro se* litigants. Not only would that duty be overly burdensome, it would transform the courts from neutral arbiters of disputes into advocates for a particular party. While courts are properly charged with protecting the rights of all who come before it, that responsibility does not encompass advising litigants as to what legal theories they should pursue.”).

The complaint does not state a claim under 42 U.S.C. § 1985(3), which prohibits conspiracies “for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws.”

[I]n order to state a cause of action under § 1985, the plaintiff must allege that the defendants (1) conspired together, (2) for the purpose of depriving, directly or indirectly, a person or class of persons of the equal protection of the laws, (3) and committed an act in furtherance of the conspiracy, (4) which caused injury to person

or property, or a deprivation of any right or privilege of a citizen of the United States, and (5) and that the conspiracy was motivated by racial, or other class-based, invidiously discriminatory animus.

*Bass v. Robinson*, 167 F.3d 1041, 1050 (6th Cir. 1999); *see also Center for Bio-Ethical Reform, Inc. v. City of Springboro*, 477 F.3d 807, 832 (6th Cir. 2007).

Shipp does not sufficiently allege a claim for civil conspiracy. As the Sixth Circuit Court of Appeals has explained:

In *Spadafore v. Gardner*, 330 F.3d 849 (6th Cir. 2003), we stated the standard governing a § 1983 conspiracy claim:

A civil conspiracy is an agreement between two or more persons to injure another by unlawful action. Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant.

330 F.3d at 854 (quoting *Hooks v. Hooks*, 771 F.2d 935, 943–44 (6th Cir. 1985)). Although circumstantial evidence may prove a conspiracy, “[i]t is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983.” *Id.* (quoting *Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir. 1987)); *accord Farhat v. Jopke*, 370 F.3d 580, 599 (6th Cir. 2004). That pleading standard is “relatively strict.” *Fieger v. Cox*, 524 F.3d 770, 776 (6th Cir. 2008).

*Heyne v. Metro. Nashville Pub. Sch.*, 655 F.3d 556, 563 (6th Cir. 2011). An assertion, unaccompanied by supporting facts, that parties conspired with each other is a legal conclusion that a court need not accept as true. *Id.* at 563-64 (collecting cases). Allegations of “a plan or agreement to violate [the plaintiff’s] constitutional rights” is required. *Id.* at 564. The complaint alleges no facts to suggest that the conduct the Defendants conspired together.

A claim under 42 U.S.C. § 1986 is entirely derivative of a valid claim pursuant to 42 U.S.C. § 1985. *Bass*, 167 F.3d at 1051 n.5. Because Shipp has no valid claim under § 1985, he also has no claim under § 1986.

Shipp has asserted claims pursuant to 42 U.S.C. § 1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) a deprivation of rights secured by the “Constitution and laws” of the United States (2) committed by a defendant acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

Shipp’s official capacity claims against the Defendants, who are CoreCivic officers and employees, are properly construed as claims against CoreCivic, also a named Defendant. However, the complaint does not allege a viable claim against CoreCivic. “A private corporation that performs the traditional state function of operating a prison acts under color of state law for purposes of § 1983.” *Thomas v. Coble*, 55 F. App’x 748, 748 (6th Cir. 2003) (citing *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996)); *see also Parsons v. Caruso*, 491 F. App’x 597, 609 (6th Cir. 2012) (corporation that provides medical care to prisoners can be sued under § 1983). The Sixth Circuit has applied the standards for assessing municipal liability to claims against private corporations that operate prisons. *Thomas*, 55 F. App’x at 748-49; *Street*, 102 F.3d at 817-18; *Johnson v. Corr. Corp. of Am.*, 26 F. App’x 386, 388 (6th Cir. 2001). CoreCivic “cannot

be held liable under a theory of respondeat superior.” *Braswell v. Corr. Corp. of Am.*, 419 F. App’x 622, 627 (6th Cir. 2011). Instead, to prevail on a § 1983 claim against CoreCivic, Shipp “must show that a policy or well-settled custom of the company was the ‘moving force’ behind the alleged deprivation” of his rights. *Id.* Shipp does not allege that his injuries are due to an unconstitutional policy or custom of CoreCivic.<sup>4</sup>

Shipp’s complaint purport to assert claims regarding the treatment of all Sunni Muslims at the HCCF; however, he lacks standing to sue for deprivations of the rights of his fellow inmates. “To state a case or controversy under Article III [of the United States Constitution], a plaintiff must establish standing.” *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 133 (2011).

[T]he irreducible constitutional minimum of standing contains three elements: First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of . . . . Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks, footnote and citations omitted); *see also Lance v. Coffman*, 549 U.S. 437, 439 (2007) (same). “In requiring a particular injury, the Court meant that the injury must affect the plaintiff in a personal and individual way.” *Winn*, 563 U.S. at 134 (internal quotation marks and citation omitted). Unless the plaintiff suffered an actual injury, he “was not the aggrieved party, [and] he lacks standing” to sue. *Percival v. McGinnis*, 24 F. App’x 243, 246 (6th Cir. 2001); *see also Corn v. Sparkman*, No. 95-5494, 1996 WL 185753, at \*1 (6th Cir. Apr. 17, 1996) (“A prisoner cannot bring claims on behalf of other prisoners. A prisoner must allege a personal loss and seek to vindicate a deprivation

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<sup>4</sup> Shipp alleges only that the policy regarding no Halal meals is an “in-house” policy at the HCCF. (ECF No. 1 at PageID 7.) He concedes that other CoreCivic-operated prison facilities “do and have had an Halal meal program.” (*Id.* at PageID 8.)

of his own constitutional rights.” (citation omitted)). Shipp does not allege that he made any personal request for Halal meals which was denied or that he sought permission from any named Defendant to obtain prayer oil from a different vendor but was denied. Rather, the claims are made on behalf of the general Sunni Muslim community at the HCCF. *See Jacobs v. Strickland*, No. 2:08-cv-680, 2009 WL 2476896, at \*3 (S.D. Ohio Aug. 11, 2009) (“The Magistrate Judge . . . correctly concluded that Mr. Jacobs could not assert the claims of other Sunni Muslims who were allegedly deprived of their rights under RLUIPA and the United States Constitution.”).

With regard to the allegation that Sunni Muslim services or prayers were canceled or delayed in retaliation for exercising his First Amendment right to file grievances, Shipp does not allege that any of the named Defendants was responsible. The only HCCF personnel allegedly involved were Shift Commander Lieutenant Godwin and Shift Commander Grier, who are not named as defendants. (ECF No. 1-1 at PageID 27-34, 36-40.)

For the foregoing reasons, Shipp has failed to state a claim against any Defendant on which relief may be granted.

The Sixth Circuit has held that a district court may allow a prisoner to amend his complaint to avoid a *sua sponte* dismissal under the PLRA. *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *see also Brown v. R.I.*, No. 12-1403, 2013 WL 646489, at \*1 (1st Cir. Feb. 22, 2013) (per curiam) (“Ordinarily, before dismissal for failure to state a claim is ordered, some form of notice and an opportunity to cure the deficiencies in the complaint must be afforded.”). Leave to amend is not required where a deficiency cannot be cured. *Brown*, 2013 WL 646489, at \*1; *Gonzalez-Gonzalez v. United States*, 257 F.3d 31, 37 (1st Cir. 2001) (“This does not mean, of course, that every *sua sponte* dismissal entered without prior notice to the plaintiff automatically must be reversed. If it is crystal clear that the plaintiff cannot prevail and that amending the



complaint would be futile, then a *sua sponte* dismissal may stand.”); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002) (“*in forma pauperis* plaintiffs who file complaints subject to dismissal under Rule 12(b)(6) should receive leave to amend unless amendment would be inequitable or futile”); *Curley v. Perry*, 246 F.3d 1278, 1284 (10th Cir. 2001) (“We agree with the majority view that sua sponte dismissal of a meritless complaint that cannot be salvaged by amendment comports with due process and does not infringe the right of access to the courts.”). In this case, the Court cannot conclude that any amendment to Shipp’s complaint would be futile as a matter of law.

In conclusion, the Court DISMISSES the complaint for failure to state a claim on which relief can be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1). However, leave to amend is GRANTED. Any amendment must be filed within twenty-one (21) days after the date of this order. Shipp is advised that an amended complaint will supersede the prior pleadings and must be complete in itself without reference to those prior pleadings. The text of the complaint must allege sufficient facts to support each claim without reference to any extraneous document. Any exhibits must be identified by number in the text of the amended complaint and must be attached to the complaint. All claims alleged in an amended complaint must arise from the facts alleged in the original complaint. Each claim for relief must be stated in a separate count and must identify each defendant sued in that count. If Shipp fails to file an amended complaint within the time specified, the Court will assess a strike pursuant to 28 U.S.C. § 1915(g) and enter judgment.

Shipp is reminded that he must promptly notify the Clerk, in writing, of any change of address or extended absence.

IT IS SO ORDERED.

s/ James D. Todd  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE